

AMENDED IN ASSEMBLY APRIL 14, 1999

CALIFORNIA LEGISLATURE—1999–2000 REGULAR SESSION

ASSEMBLY BILL

No. 482

Introduced by Assembly Member Davis

February 18, 1999

An act to add Chapter 3 (commencing with Section 14100) to Part 5 of Division 3 of Title 1 of the Corporations Code, and to add *and repeal* Sections 12207, 17059, and 23626 ~~to~~ of the Revenue and Taxation Code, relating to business development.

LEGISLATIVE COUNSEL'S DIGEST

AB 482, as amended, Davis. Business investments.

Existing law provides for various programs to provide financial assistance to small businesses and other enterprises. Among other things, existing law provides for the establishment of small business financial development corporations to provide financial assistance to small businesses. In general, those corporations are authorized to provide loans and loan guarantees.

This bill would enact the California Seed Capital and Early Stage Corporation Act. The bill would create the California Seed Capital and Early Stage Corporation, which would be independent of other state agencies, and which would be governed by a board of directors consisting of 7 members appointed by the Governor and Legislature, as specified. The ~~board~~ Governor would appoint ~~a~~ *the chairperson of the board*

and—*a the board members would select the vice chairperson and the managing director.*

This bill would provide that the purpose of the corporation is to provide financial and other assistance to new and early stage enterprises in the state economy.

The bill would establish the California Seed Capital and Early Stage Corporation Fund.

The bill would express intent that the corporation become self-supporting by July 1, 2006.

The bill would authorize the corporation to certify—~~an investment~~ *the fund* for the raising and investment of capital, as specified. Investors in the—~~investment~~ *fund and assignees* would be authorized to claim tax credits *for a specified period of time* against their insurer gross premium, personal income, or bank and corporation tax liability to the extent that their investment in the—~~investment~~ fund fails to meet a scheduled rate of return, with the total amount of tax credits available not to exceed \$100,000,000.

Vote: majority. Appropriation: no. Fiscal committee: yes. State-mandated local program: no.

The people of the State of California do enact as follows:

1 SECTION 1. Chapter 3 (commencing with Section
2 14100) is added to Part 5 of Division 3 of Title 1 of the
3 Corporations Code, to read:

4
5 CHAPTER 3. CALIFORNIA SEED CAPITAL AND EARLY
6 STAGE CORPORATION
7

8 14100. This chapter shall be known and may be cited
9 as the California Seed Capital and Early Stage
10 Corporation Act.

11 14101. For purposes of this chapter, the following
12 words and terms shall have the following meanings unless
13 the context clearly indicates or requires another or
14 different meaning or intent:

15 (a) “Act” means the California Seed Capital and Early
16 Stage Corporation Act.

1 (b) “Fund” means the California Seed Capital and
2 Early Stage Corporation Fund.

3 (c) “Corporation” means the California Seed Capital
4 and Early Stage Corporation.

5 (d) “Board” means the board of directors of the
6 California Seed Capital and Early Stage Corporation
7 Fund.

8 (e) “Investor” means any individual, corporation,
9 partnership, or other lawfully organized entity.

10 ~~(f) “Investment fund” means the fund designated and~~
11 ~~certified by the corporation pursuant to Section 14113~~
12 ~~and its investors.~~

13 ~~(g)~~

14 (f) “Certificate” means the contract between the
15 corporation and the investment fund.

16 ~~(h)~~

17 (g) “Tax credits” means tax credits available pursuant
18 to Sections 12207, 17059, or 23626 of the Revenue and
19 Taxation Code.

20 14102. (a) There is hereby established the California
21 Seed Capital and Early Stage Corporation.

22 (b) The California Seed Capital and Early Stage
23 Corporation is a corporation, and shall be independent of
24 any state agency.

25 14103. It shall be the purpose of the corporation to
26 mobilize private financial and other assistance to new and
27 early stage enterprises in the state economy.

28 14104. (a) The corporation shall be governed by a
29 seven-member board of directors.

30 (b) Five members of the board shall be appointed by
31 the Governor, one member by the Speaker of the
32 Assembly, and one member by the Senate Committee on
33 Rules.

34 (c) Members shall be representative of the private
35 sector and shall have prior investment experience.

36 (d) The members shall serve for four-year terms,
37 expiring on July 1, except that, to provide for staggered
38 terms, three members appointed by the Governor shall
39 have an initial term expiring on July 1, 2001, two members
40 appointed by the Governor shall have an initial term

1 expiring on July 1, 2004, the initial member appointed by
2 the Speaker of the Assembly shall have a term expiring on
3 July 1, 2003, and the initial member appointed by the
4 Senate Committee on Rules shall have a term expiring on
5 July 1, 2002.

6 ~~14105. Members of the board shall serve without~~
7 ~~compensation.~~

8 *14105. The chairperson of the board shall be*
9 *appointed by the Governor from among the members of*
10 *the board. The vice chairperson of the board shall be*
11 *selected by a majority of the members of the board.*

12 14106. (a) The members of the board and the
13 *managing* director shall be subject to the same
14 restrictions as are applicable to the officers and directors
15 of a state agency, including, but not limited to, the
16 Political Reform Act of 1974 (Title 9 (commencing with
17 Section 81000) of the Government Code) and shall adopt
18 a conflict-of-interest code.

19 (b) Meetings of the board shall be public as provided
20 by the Bagley-Keene Open Meeting Act, but any meeting
21 in which business features of entities dealing with the
22 corporation may be disclosed shall not be required to be
23 open.

24 (c) The board may purchase insurance for its
25 fiduciaries or for itself to cover liability or losses occurring
26 by reason of the act or omission of a fiduciary, if the
27 insurance permits recourse by the insurer against the
28 fiduciary in the case of a breach of fiduciary obligation by
29 the fiduciary.

30 14107. ~~(a)~~ The board may contract with one or more
31 private entities to manage the affairs of the corporation,
32 including the management of the fund.

33 ~~(b) The board shall select a chairperson from among~~
34 ~~the members of the board.~~

35 14108. (a) The board shall select a *managing* director
36 who shall serve at the pleasure of, and under the direction
37 of, the board.

38 (b) The *managing* director shall manage and conduct
39 the business and affairs of the corporation subject to the
40 direction of the board.

(c) In administering and directing the operations of the corporation, the *managing* director, or his or her designee, may do any of the following if authorized by resolution of the board:

(1) Enter into contracts for management, investment, guarantee, or enhancement.

(2) Establish procedures, guidelines, criteria, terms, conditions, or other requirements of any ~~contract, bond, grant, or program, as the case may be,~~ *investment* in order to carry out the intents and purposes of the board in authorizing any ~~bond, loan, or grant program~~ *investment* pursuant to this division.

(3) Decline to guarantee any risk, or to enter into any contract, in which the minimum requirements of the corporation are not complied with.

(4) Reinsure any risk or any part of any risk.

(5) Make rules for payments and settlements of claims.

(6) Enter into any contracts or obligations relating to the corporation.

(7) Invest and reinvest the moneys belonging to the corporation.

(8) Enter into any contract or agreement, execute any instrument, conduct all business and affairs, and perform all acts relating to the corporation whether or not specifically designated in this division.

14109. There is hereby established the California Seed Capital and Early Stage Corporation Fund.

14110. All money received by the corporation, including ~~money appropriated to the corporation and~~ funds received from transaction fees and guarantee fees, shall be deposited into the fund. Money in the fund shall be used exclusively for the purposes of this chapter.

14111. It is the intent of the Legislature that the corporation shall be self-supporting from program income by July 1, 2006.

14112. (a) The corporation shall mobilize investment in private seed and venture capital partnerships or entities pursuant to a general investment policy prescribed by the corporation ~~and implemented through a single designated for-profit investment fund.~~

~~(b) The corporation shall certify an investment fund for the raising and investment of capital in accordance with the requirements of this chapter. In making the certification, the corporation shall consider the investment fund's quality of management, investment philosophy and process, probability of success in fund raising, and plan for achieving the purposes of this chapter in a way that minimizes the use of tax credits. The manager of the investment fund shall be a person with demonstrated substantial successful experience in the design, implementation, and management of state-sponsored seed and venture capital investment programs and in capital formation. The investment fund, upon certification by the corporation, shall be authorized to exercise all the rights provided in this chapter.~~

(b) The corporation shall certify the fund for the raising and investment of capital in accordance with the requirements of this chapter. In making the certification, the corporation shall consider the following factors with respect to venture capital entities that would be financially assisted by the fund:

(1) Quality of management.

(2) Investment philosophy.

(3) Probability of success in raising capital.

(4) Plan for achieving the purposes of this chapter in a manner that minimizes the use of tax credits.

(c) The manager of each venture capital entity applying to the fund for financial assistance shall be a person with demonstrated experience in managing a venture capital fund or in investing in start-up and early stage ventures.

14113. (a) An investor in the ~~investment~~ fund may claim a tax credit against the investor's tax liability pursuant to Section 12207, 17059, or 23626 of the Revenue and Taxation Code, consistent with the requirements of this chapter; *however, a tax credit may not be claimed before January 1, 2000, or after December 31, 2025.* The tax credit allowed may be assigned to affiliated corporations pursuant to subdivision (e) of Section 23626 of the Revenue and Taxation Code; ~~however, no tax~~

1 ~~credit may be claimed before January 1, 2000, nor after~~
2 ~~December 31, 2025.~~ Tax credits may not be claimed
3 except in accordance with a certificate from the
4 corporation.

5 (b) The corporation shall certify the amount of tax
6 credits to be allowed to investors in the ~~investment~~ fund
7 and the years those tax credits may first be claimed
8 pursuant to this chapter. The amount of tax credits shall
9 be sufficient to support the raising and investing of one
10 hundred million dollars (\$100,000,000) of investment
11 capital ~~by the investment fund~~. The amount of tax credits
12 certified for use ~~by the investment fund~~ shall be limited
13 to an amount sufficient only to offset any shortfalls that
14 occur in the scheduled returns to investors of invested
15 capital and returns on invested capital at rates of return
16 authorized by the corporation. Those rates, whether fixed
17 rates or variable rates, shall be determined pursuant to a
18 formula stipulated in the certificate. The corporation
19 shall clearly indicate within the certificate the schedules
20 and formulas by which any shortfalls that occur in returns
21 of invested capital may be calculated, and thereby, the
22 amount of tax credits that may be claimed. The certificate
23 shall be binding on the Franchise Tax Board, *the*
24 *Controller, and the State Board of Equalization.*

25 14114. The corporation shall biennially report to the
26 Legislature commencing January 1, 2003, on its
27 performance. The items to be included in this report shall
28 be determined by the board but shall minimally include
29 annual measures of return on investment, the number of
30 companies assisted by the corporation, and the number
31 of jobs created by companies assisted by the corporation,
32 broken down by Standard Industrial Classification Code.
33 Additional quantifiable benchmarks and performance
34 criteria shall be developed by the *managing* director
35 upon consultation with the board. *The Employment*
36 *Development Department shall provide the corporation*
37 *with an annual report commencing on January 1, 2001, of*
38 *the aggregate number of employees of those companies*
39 *assisted by the corporation.*

1 14115. Nothing in this chapter shall be construed as a
2 restriction or limitation upon the powers of the
3 corporation as may be granted by any other law. The
4 provisions of this chapter are intended to provide
5 additional and alternative methods for accomplishing the
6 authorized activities of the corporation.

7 SEC. 2. Section 12207 is added to the Revenue and
8 Taxation Code, to read:

9 12207. (a) There shall be allowed as a credit against
10 the “tax” (as defined by Section 12201) a credit in an
11 amount prescribed in a certificate issued by the California
12 Seed Capital and Early Stage Corporation pursuant to
13 Chapter 3 (commencing with Section 14100) of Part 5 of
14 Division 3 of Title 1 of the Corporations Code.

15 (b) *This section shall remain in effect only until*
16 *December 1, 2026, and as of that date is repealed.*

17 SEC. 3. Section 17059 is added to the Revenue and
18 Taxation Code, to read:

19 17059. (a) For each taxable year beginning on or
20 after January 1, 2000, and before January 1, 2026, there
21 shall be allowed as a credit against the “net tax” (as
22 defined by Section 17039) a credit in an amount
23 prescribed in a certificate issued by the California Seed
24 Capital and Early Stage Corporation pursuant to Chapter
25 3 (commencing with Section 14100) of Part 5 of Division
26 3 of Title 1 of the Corporations Code.

27 (b) The California Seed Capital and Early Stage
28 Corporation shall do all of the following:

29 (1) Certify the amount of tax credit allowed to each
30 taxpayer pursuant to Section 14113 of the Corporations
31 Code and the taxable year the credit may first be claimed
32 by the taxpayer.

33 (2) Obtain the taxpayer’s taxpayer identification
34 number, or each partner’s taxpayer identification
35 number in the case of a partnership, for tax
36 administration purposes.

37 (3) Provide an annual listing to the Franchise Tax
38 Board, in the form and manner agreed upon by the
39 Franchise Tax Board and the California Seed Capital and
40 Early Stage Corporation, containing the names, taxpayer

1 identification numbers pursuant to paragraph (2), and
2 total amount of credit certified to each taxpayer.

3 (c) The taxpayer shall do all of the following:

4 (1) Retain a copy of the certification issued by the
5 California Seed Capital and Early Stage Corporation as
6 specified in paragraph (1) of subdivision (b).

7 (2) Provide the certification specified in paragraph
8 (1) of subdivision (b) to the Franchise Tax Board upon
9 request.

10 (3) Provide the California Seed Capital and Early
11 Stage Corporation with the taxpayer's identification
12 number, or in the case of a partnership, the taxpayer
13 identification numbers of all partners.

14 (d) For purposes of this section only, "taxpayer"
15 means an investor, as defined by subdivision (e) of
16 Section 14101 of the Corporations Code.

17 (e) This section shall remain in effect only until
18 December 1, 2026, and as of that date is repealed.

19 SEC. 4. Section 23626 is added to the Revenue and
20 Taxation Code, to read:

21 23626. (a) For each income year beginning on or
22 after January 1, 2000, and before January 1, 2026, there
23 shall be allowed as a credit against the "tax" (as defined
24 by Section 23036) a credit in an amount prescribed in a
25 certificate issued by the California Seed Capital and Early
26 Stage Corporation pursuant to Chapter 3 (commencing
27 with Section 14100) of Part 5 of Division 3 of Title 1 of the
28 Corporations Code.

29 (b) The California Seed Capital and Early Stage
30 Corporation shall do all of the following:

31 (1) Certify the amount of tax credit allowed to each
32 taxpayer pursuant to Section 14113 of the Corporations
33 Code and the income year the credit may first be claimed
34 by the taxpayer.

35 (2) Obtain the taxpayer's taxpayer identification
36 number, or each shareholder's taxpayer identification
37 number in the case of a subchapter S corporation, for tax
38 administration purposes.

39 (3) Provide an annual listing to the Franchise Tax
40 Board, in the form and manner agreed upon by the

1 Franchise Tax Board and the California Seed Capital and
2 Early Stage Corporation, containing the names, taxpayer
3 identification numbers pursuant to paragraph (2), and
4 total amount of credit certified to each taxpayer.

5 (c) The taxpayer shall do all of the following:

6 (1) Retain a copy of the certification issued by the
7 California Seed Capital and Early Stage Corporation as
8 specified in paragraph (1) of subdivision (b).

9 (2) Provide the certification specified in paragraph
10 (1) of subdivision (b) to the Franchise Tax Board upon
11 request.

12 (3) Provide the California Seed Capital and Early
13 Stage Corporation with the taxpayer's identification
14 number, or in the case of a subchapter S corporation, the
15 taxpayer identification numbers of all shareholders.

16 (d) For purposes of this section only, "taxpayer"
17 means an investor, as defined by subdivision (e) of
18 Section 14101 of the Corporations Code.

19 (e) (1) A corporation may elect to assign any portion
20 of any credit allowed under this section to one or more
21 affiliated corporations for each income year in which the
22 credit is allowed. For purposes of this subdivision,
23 "affiliated corporation" means a corporation that is a
24 member of a commonly controlled group as defined in
25 Section 25105, as of the last day of the income year in
26 which the credit is allowed.

27 (2) The election provided in paragraph (1):

28 (A) May be based on any method selected by the
29 corporation that originally receives the credit.

30 (B) Shall be irrevocable for the income year the credit
31 is allowed, once made.

32 (C) May be changed for any subsequent income year
33 if the election to make the assignment is expressly shown
34 on each of the returns of the affiliated corporations that
35 assign and receive the credits.

36 (f) This section shall remain in effect only until
37 December 1, 2026, and as of that date is repealed.

